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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

FEB 11 2014

T: EP: RA: T2

Uniform Issue List: 402.03-00

Legend:

Taxpayer = *****

Plan X = *****

Amount A = *****

Amount B = *****

Dear *****.

This is in response to your request dated April 25, 2012, as supplemented by correspondence dated August 7, 2012, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer represents that he received a distribution from Plan X totaling Amount A, and Amount B of that distribution was withheld for federal income tax purposes. Taxpayer asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to Taxpayer incorrectly completing the paperwork, thus subjecting the distribution to tax withholding. Taxpayer further represents that the portion of Amount A that Taxpayer received was rolled over into a rollover IRA; and that he will file a tax return to obtain Amount B if he receives a waiver of the 60-day rollover requirement.

Taxpayer received Amount A from Plan X on September 13, 2011, upon termination of Plan X. Taxpayer intended to rollover his entire account balance, Amount A into an IRA. The distribution was requested and the check was issued to Taxpayer. However, upon receipt of the check, Taxpayer discovered that Amount B was withheld for federal income tax and was not available to be rolled over within the 60-day rollover period. The check was deposited into a rollover IRA within the 60-day period. Despite the fact that Taxpayer intended to roll over the entire Amount A, the form that Taxpayer had completed indicated that Taxpayer requested distribution of the entire account to Taxpayer (rather than a direct rollover to the IRA), which triggered Amount B to be withheld from the distribution. Further, Taxpayer acknowledged that he received a notice from the plan administrator that indicated amounts would be withheld if the distribution was not directly rolled over into an IRA or another eligible retirement plan.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to Amount B.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 402(f)(1)(B) of the Code provides that the plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient of the provision which requires the withholding of a tax on the distribution if it is not directly transferred to an eligible retirement plan.

Treas. Reg. 1.401(a)(31)-1, Q&A-1, provides that if a distributee of an eligible rollover distribution does not elect to have the rollover distribution paid directly from the plan to an eligible retirement plan in a direct rollover under section 401(a)(31) of the Code, the eligible rollover distribution is subject to a 20 percent income tax withholding under section 3405(c) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer has not presented sufficient evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to roll over Amount B to an IRA or another retirement solution. Taxpayer has admitted that his failure to accomplish a timely rollover was caused by his own mistake.

Therefore, pursuant to section 402(c)(3) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount B from Plan X.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact ***** at (****) ****-****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason E. Levine, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose